87-426

Supreme Court, U.S.
FILED
AUG 12 1987
JOSEPH F. SPANIOL
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

No._____

JAMES STEFANOPOULOS,

PETITIONER,

V.

UNITED STATES OF AMERICA AND
CYNTHIA A. FAZIO, REVENUE AGENT
OF THE INTERNAL REVENUE SERVICE,

RESPONDENT.

PETITION FOR WRIT OF CERITORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

James Stefanopoulos
6490 Duet Lane
Cincinnati, OH 45239
(513) 923-1225

QUESTIONS PRESENTED FOR REVIEW

Whether or not the United States Sixth Circuit Court of Appeals erred in upholding the District Court's finding of contempt and the imposition of sanctions (order dated May 15, 1987).

Whether or not the District Court of Southern Ohio enforced a defective Internal Revenue Service Summons.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

No. _____

JAMES STEFANOPOULOS,

PETITIONER,

V.

UNITED STATES OF AMERICA AND
CYNTHIA A. FAZIO, REVENUE AGENT
OF THE INTERNAL REVENUE SERVICE,

RESPONDENT.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

The petitioner, James Stefanopoulos, respectfully prays that a writ of certiorari issue to review the judgement of the United States Court of Appeals for the Sixth Circuit entered on 15 May 1987. Petitioner also wishes to remind the court that he is proceeding as pro se and respectfully asks this court to settle the questions of law and settle every subsidiary question fairly included therein.

JURISDICTION

On 15 May 1987, the Court of Appeals entered a judgement affirming the contempt order of U.S. District Court Judge Herman J. Weber issued on 13 May 1986. On 9 June 1987 the mandate issued and jurisdiction is invoked under title 28 U.S.C. SEC. 1254 (1).

By writ of certiorari granted upon the petition of any party to any civil or criminal case before or after rendition of judgement or decree.

CONSTITUTIONAL PROVISION INVOLVED

United States Constitution, Amendment V:

> Nor shall any person... be deprived of life, liberty, or property, without due process of law....

STATEMENT OF THE CASE

On 18 August 1986, petitioner filed an appeal in the Court of Appeals for the Sixth Circuit (Case No. 86-3785, Page 10a). The issue presented on appeal was whether or not the District Court could properly enforce through contempt an administrative Internal Revenue Service 2039 Summons based on the perjurious affidavit of the issuing IRS Agent, Cynthia A. Fazio. A myriad of Constitutional questions arise if the Court of

Appeals was correct and if Powell v. USA is given any meaning. In Powell, the Supreme Court went to great lengths to outline the requisite showings the IRS is to make. The IRS agent must swear under oath that the books, papers, records, or other data sought by the summons are not in the possession of the IRS. The record shows that Agent Fazio perjured herself. She falsely stated in her affidavit that the records being sought were not in the possession of the IRS (Item #6, Page 31a) while her IRS Referral Sheet (Item #7, Page 33a) shows that the summoned material was already in its possession. Further, the government never produced Agent Fazio as a witness as it is obliged to do, substituting Agent Kenneth Schoster in her stead. Even so, Agent Schoster admitted some thirteen months later (11 April 1986) that the Internal Revenue Service had in its files some of the records demanded of the petitioner, which only added more weight to the fact that Agent Fazio perjured herself.

The decision of the Sixth Circuit has so far departed from the accepted and usual cause of judicial proceedings, or has so far sanctioned such a departure by

a lower court, as to call for an exercise of this court's supervision.

II

The government averred that "a party petitioning for a civil contempt finding must prove by clear and convincing evidence that the respondent violated the order" by citing USA v. Hayes and Northside Realty Assocs., Inc. v. USA. Omitted was the clearly known fact that the petitioner could not provide complete tender of the records to the IRS and thereby fully satisfy that District Court's order of 13 May 1986. The records in question are stock transaction statements from Prudential-Bache for the period 1978-1981, Dean Witter statements for 1981-1983 and Thomson McKinnon statements for 1983. The IRS knew full well of the unavailability of the Prudential-Bache stock statements since IRS agents paid a visit to the Prudential-Bache offices shortly after the petitioner testified in the District Court on 11 April 1986 of his attempts to reconstruct the missing records. By 2 May 1986, the government had verified to the court that the stock statements were indeed not available to the petitioner. The court's order of

13 May 1986, nevertheless, ordered their delivery. On 18 July 1986 the court modified its order to reflect that the Prudential-Bache statements need not be produced and found the petitioner in contempt of its 13 May 1986 order for not having delivered what records he did have, even though it was known beforehand complete tender of the records could not be effected. The petitioner filed an appeal to the Sixth Circuit Court of Appeals and that court opined: "This is a refusal to abide by a court order without just cause and therefore it is our opinion that the trial court's finding of contempt should be affirmed."

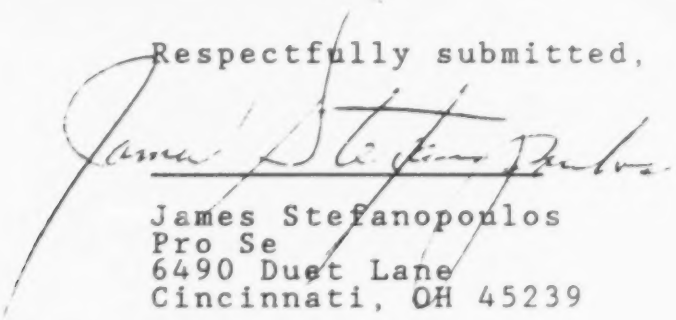
It is a difficult argument to make on review that one judge should substitute his thinking for another, but in view of the record and the Powell requirements and given a judicial forum, a perjurious affidavit should have no standing. There are some rights so fundamental to due process that they can never be considered harmless error and petitioner asserts that perjurious affidavits have no place in the judiciary and should be ground for the writ to issue to the Sixth Circuit Court of Appeals.

CONCLUSION

For these reasons, petitioner James Stefanopoulos respectfully requests that a writ of certiorari issue to review the judgement of the United States Court of Appeals for the Sixth Circuit.

Pending the disposition of this case it is prayed that this court grant a stay of the District Court's contempt order. The urgency which the petitioner brings to this court is apparent from Judge Weber's most current order dated 4 August 1987.

Respectfully submitted,



James Stefanopoulos
Pro Se
6490 Duet Lane
Cincinnati, OH 45239

Dated: 9 August 1987

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA,
Plaintiff

C-1-85-576

v.

JAMES STEFANOPOULOS,
Defendant

FILED May 13, 1986

ORDER

Pursuant to a hearing held May 7, 1986, and the agreement of the parties, the Court hereby **ORDERS** that the defendant, James Stefanopoulos deliver to the Internal Revenue Service ("IRS") the W-2 statements from Thomson McKinnon Securities, Inc. for the year 1983, and for Prudential Bache Securities for the year of 1981. Defendant is further **ORDERED** to deliver to the IRS the brokerage statements reflecting his stock transactions for the years 1978 through 1983 from Thomson Mckinnon Securities, Inc., Prudential Bache Securities, and Dean Witter Reynolds, Inc.

Upon compliance with this Order, the Court finds defendant has shown good faith with this Court and this matter will be closed.

IT IS SO ORDERED.

signed
Herman J. Weber, Judge
United States District Court

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA,
Plaintiff

C-1-85-576

v.

JAMES STEFANOPOULOS,
Defendant

Decided and Filed July 18, 1986

ORDER

A hearing was held in this matter on July 18, 1986 at 11:30 A.M. pursuant to this Court's July 16, 1986 Order setting the case for hearing concerning the status of defendant's compliance with this Court's Order dated May 13, 1986.

On May 13, 1986, this Court ordered the defendant, James Stefanopoulos to deliver to the Internal Revenue Service ("IRS") the W-2 statements from Thomson McKinnon Securities, Inc. for the year 1983 and from Prudential Bache Securities for the year 1981. Defendant was further ordered to deliver to the IRS the brokerage statements reflecting his stock transactions for the years 1978 through 1983 from Thonmson McKinnon Securities, Inc., Prudential Bache Securities and Dean Witter Reynolds, Inc.

Mr. Stefanopoulos stated at the July 18, 1986 hearing that he does indeed have brokerage statements from Thomson McKinnon

Securities Inc., and Dean Witter Reynolds, Inc. in which he did not deliver to the IRS. Mr. Stefanopoulos also indicated that he has no statements from Prudential Bache Securities. The United States Attorney concurred that no such statements from Prudential Bache are in Mr. Stefanopoulos' possession.

This Court finds that defendant has refused to comply with the May 13, 1986 Order of this Court in failing to produce the statements in issue from Thomson McKinnon Securities Inc., and Dean Witter Reynolds, Inc. The Court, therefore, finds Mr. Stefanopoulos in contempt.

Defendant is **ORDERED** to the custody of the United States Marshall Service for processing and commitment until he delivers said statements which he has in his possession. Mr. Stefanopoulos is released from such custody for a period of 30 days upon posting a cash bond in the amount of $1,000 with the District Clerk of Courts for the Southern District of Ohio in order that defendant may perfect his appeal.

IT IS SO ORDERED.

signed
Herman J. Weber, Judge

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IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

United States of America and
Cynthia A. Fazio, Revenue Agent
of the Internal Revenue Service,
Petitioners,

Case No. 86-3785
District Court No.
C-1-85-576

Herman J. Weber
U.S. District Judge

DIRECT APPEAL OF
U.S. DISTRICT
COURT'S ORDER OF
JULY 18, 1986

v.

James Stefanopoulos,
Defendant.

Date Filed September 8, 1986

Issues Presented For Review

1. Defective summons which operated to the prejudice of the defendant.

2. Whether or not the district court erred by allowing inadmissable testimony which caused the court itself to find the defendant guilty of contempt thereby enforcing an illegal summons in violation of the Constitution and Laws of the United States.

Memorandum In Support
Of The Instant Appeal

Now comes defendant James Stefanopoulos and respectfully petitions this court for the relief that he is entitled to.

Defendant states for the record that it is

his sincere belief that this appeal is not frivolous and is made in good faith. Regarding the issues being raised at this particular time, the summons was not truly enforced until the district court issued its order of July 18, 1986.

On January 4, 1985 and January 7, 1985, respectively, administrative IRS 2039 Summonses were issued to the defendant by IRS Agent Cynthia A. Fazio. Because of legal disagreement between IRS agents and the defendant, Ms. Fazio filed a petition to enforce the IRS 2039 Summons through contempt in the U.S. District Court. Subsequent to that action an order to show cause was issued on March 1, 1985 and the report and recommendation was adopted over the objection of the defense on August 20, 1985. A demand for discovery, a motion for an evidentiary hearing, and motion to compel were denied the defendant by the Sixth Circuit on March 11, 1986. At this point the IRS instituted contempt proceedings and a hearing was set for April 4, 1986 before the Honorable Herman J. Weber.

On July 18, 1986 the court held that the defendant was guilty of contempt. (See complete Procedural Posture, Exhibit

A). At this point the IRS 2039 Summons was enforced by the court. The defendant's contention is that the IRS 2039 Summons and supporting affidavit were inadmissable due to defectiveness and lack of probable cause, in that the issuing revenue officer was Ms. Fazio and the testifying agent was Mr. Kenneth Schoster. Ms. Fazio did not appear in support of the government's case as is required. Agent Fazio swore in her affidavit (Exhibit B, item 6) that the government had none of the summoned material in its possession, but the IRS summons referral sheet (Exhibit C, January 7, 1985, line 7) indicates that the IRS did have summoned material in its possession. Agent Fazio's affidavit was on the face of the record perjurious and most certainly did not rise to the level of probable cause to allow the issuance of the administrative IRS 2039 Summons.

The defendant repeatedly tried to have Agent Fazio's whereabouts made known to him so that he could have his right to compulsory process upheld in the courts. No information was divulged to the defendant and at the contempt hearing before Judge Weber a substitute witness

(IRS Agent Schoster) testified to the validity of Agent Fazio's summons and supporting affidavit. When asked on cross-examination, Agent Schoster admitted he did not issue the summons (Exhibit D, hearing transcript pg. 18-19, lines 25, 1-2, April 4, 1986). The hearing court, being aware of Agent Schoster's non-involvement in raising the government's case to probable cause level, erred in allowing his hearsay testimony to be admitted in support of the summons issued by Agent Fazio. Papadakis v. U.S. 208 F.2d 946 (CA-9, 64-1 US TC 9137) offers insight pertaining to the admissability of this type of testimony.

The hearsay rule is concerned only with the reliability of evidence offered to prove a fact, whatever the fact might be. It operates to render inadmissable extrajudicial writings or declarations introduced to prove the truth of what was said or written, on the theory that such evidence not being subject to the tests of cross-examination is not reliable. (5 Wigmore on Evidence 1361).

Cross-examination is essential as a test of truth and provides an opportunity to test the credibility of the witness,

his observations, memory, prejudice and possible errors. It also subjects the witness to penalties of perjury and may eliminate deliberate or unintentional misstatements of what he has been told.

Agent Schoster was in no position t articulate to the court what facts raise Agent Fazio's "petition to enforce" to a probable cause level. The defendant was in a position of jeopardy through contem based on the inadmissable testimony of t non-issuing revenue agent and through an action of the court the defendant was denied due process. Defendant could not raise the issue until the IRS 2039 summo was enforced <u>through</u> contempt.

Therefore, it is respectfully praye by the defendant that the court order th lower court to dismiss the contempt findings or, in the alternative, reverse and remand with instructions deemed appropriate by this court.

Respectfully Submitted,

<u>signed</u>_____
James Stefanopoulos
6490 Duet Ln.
Cincinnati, Ohio 45239

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No. 86-3785

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA and
CYNTHIA A. FAZIO, Revenue Agent
of the Internal Revenue Service,
Petitioners-Appellees,

ON APPEAL FROM
THE ORDER OF THE
UNITED STATES
DISTRICT COURT FOR
THE SOUTHERN
DISTRICT OF OHIO

v.

JAMES STEFANOPOULOS,
Respondent-Appellant.

Decided and Filed May 15, 1987

Before: KEITH, Circuit Judge;
WEICK and CONTIE, Senior Circuit Judges

PER CURIAM. Defendant-Appellant James Stefanopoulos, appeals from a district court order holding him in contempt of court for his failure to obey the court's order of May 30, 1986, which directed appellant to comply with an Internal Revenue Service summons.

I

On January 7, 1985, the Internal Revenue Service issued a summons pursuant to 26 U.S.C. & 7602, directing appellant to appear before Revenue Agent Cynthia A. Fazio on January 29, 1985. The summons further directed appellant to bring, and

to testify in regards to, certain records in connection with appellant's federal income tax liabilities for the years 1978 through 1983. Appellant failed to appear at the January 29 meeting. On February 27, 1985, the IRS filed a petition in the federal district court to enforce the summons and sought an order directing appellant to show cause why he should not comply with the summons. On March 1, 1985, a United States Magistrate entered an order to show cause and directed appellant to file a written response before the hearing scheduled for April 25, 1985.

On April 25, 1985, the hearing was held on the order to show cause. Although appellant had not previously filed a written response, he argued at the hearing that the U.S. Magistrate lacked jurisdiction to hear the case because appellant had not consented to jurisdiction as required by 28 U.S.C. &636(c)(2). The Magistrate explained that the case was not referred to him by the district court for a final order under &636(c), but was referred pursuant to &636(a) and (b) and Rule 72(b) of the Federal Rules of Civil Procedure, for a report and

recommendation.

The Magistrate's report and recommendation was filed on April 30, 1985, recommending that the summons be enforced. Appellant filed no (sic) objections to the Magistrate's report, but the district court denied appellant's demand for discovery and adopted the Magistrates's report and recommendation. Appellant filed a notice of appeal on August 29, 1985, as well as a motion for stay pending appeal.

On appeal, appellant maintained that the Magistrate lacked jurisdiction and that he should be allowed discovery. This court rejected appellant's arguments on March 11, 1986, stating that they were without merit and frivolous. The court held that the Magistrate acted within his authority and that the district court properly granted the petition for enforcement of the IRS summons. The court affirmed the district court's denial of appellant's motion to compel discovery, noting that there must be an abuse of process before a court may compel discovery in summons enforcement proceedings.

In the meantime, appellant's appeal was denied on October 4, 1985, by the

district court. The IRS subsequently moved for a finding of contempt on October 21, 1985, because appellant still refused to abide by the summons. The district court held an evidentiary hearing on the motion for contempt on April 4, 1986. The court noted the repeated attempts by the IRS to get appellant to produce the records in question. During the hearing, the court explained to the appellant in great detail the meaning and consequences of being held in contempt. Appellant admitted he had the records in question, but he pleaded as his defense the Fifth Amendment privilege against self-incrimination. At the end of the hearing the court reserved a ruling on the motion for contempt and ordered appellant to appear before the IRS on April 7, 1986, and turn over the records in question.

On April 7, 1986, appellant did turn over some records, but the IRS felt that he had not turned over all of the requested records. The IRS then requested a hearing to determine whether appellant should be held in contempt for not following the court's most recent order.

The additional hearing was held and the district court determined that

appellant needed to further comply with the summons. Appellant was to indicate each employer he worked for during the years 1978 through 1983, and supply the relevant W-2 forms. He was ordered to produce a print-out of the computer disc on which he claimed to keep a record of his stock transactions; if he could not provide such a print-out, he was to give the disc to the IRS so they could retrieve the necessary information. A hearing was scheduled for May 2, 1986, to determine if appellant had complied with the court's order.

The May 2 hearing was held, and appellant was again ordered to further comply with the summons. Appellant was ordered to provide W-2 statements for the tax year 1981 from Prudential Bache Securities and for 1983 From Thomson McKinnon Securities. He was also to provide brokerage statements concerning his stock transactions for the years 1978 through 1983. The court stated that if he complied with this order he would be found to have acted in good faith.

Thereafter, appellant refused to turn over all the documents specified in the court's May 13, 1986 order. The IRS

requested that the district court give appellant until July 16 [sic], 1986, to comply with the order. The court allowed appellant the time and held another contempt hearing on July 16 [sic], 1986. Appellant conceded that he had the brokerage statements required by the prior order, but had not given them to the IRS. Accordingly, appellant was held in contempt of court for failing to comply with the district court's order of May 13, 1986. The court ordered appellant to be taken into custody until he turned over the records. The court then released appellant from custody upon the posting of a $1,000 cash bond in order that appellant could file this appeal.

II.

Appellant argues that the finding of contempt by the district court is invalid because there was no probable cause to enforce the summons. Appellant asserts there was no probable cause because Agent Fazio swore in her affidavit that the government had none of the summoned material in its possession when in fact it did have some of the material. Appellant also claims that the district court erred when it allowed Agent Schoster to testify

in support of the summons when Fazio was the issuing agent. Appellant claims this testimony is inadmissible hearsay evidence.

Appellant's arguments are totally without merit. This court has already found that the enforcement of the IRS summons was proper. It is now too late for appellant to attack the validity of the affidavit. The Supreme Court cited in Maggio v. Zeitz, 333 U.S. 56, 69 (1948), that "[i]t would be a disservice to the law if we were to depart from the long-standing rule that a contempt proceeding does not open to reconsideration the legal or factual basis of the order alleged to have been disobeyed and thus become a retrial of the original controversy. The procedure to enforce a court's order commanding or forbidding an act should not be so inconclusive as to foster experimentation with disobedience."

Therefore, the only substantive issue before this court is whether the district court erred in holding appellant in contempt of court. The power of the court to hold a party in contempt is governed by 18 U.S.C. &401, which provides:

A court of the United States shall have

power to punish by fine or imprisonment, at its discretion, such contempt of its authority, and none other, as--
(1) Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;
(2) Misbehavior of any of its officers in their official transactions;
(3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command.

It is our opinion that the district court did not err in finding that appellant violated section 401(3) when he refused to abide by the court's May 13, 1986 order. A party petitioning for a civil contempt finding must prove by clear and convincing evidence that the respondent violated the order. United States v. Hayes, 722 F.2d 723, 725 (11th Cir. 1984); Northside Realty Assocs., v. United States, 605 F.2d 1348, 1352 (5th Cir. 1979). In order to make a prima facie case of contempt, the moving party is required only to demonstrate that certain conduct was required (or prohibited) by a previous court order and that the alleged contemptor failed to comply. United States v. Seetapun, 750 F.2d 601, 604, 605

(7th Cir. 1984). Once the prima facie case is made, the responder can come forward with evidence of inability to comply with the order. Maggio v. Zeitz, 333 U.S. 56 (1948). In the case at hand, the prima facie case was made when the IRS showed that appellant did not turn over the records that the court ordered him to produce. Appellant does not claim to be unable to turn over the records but instead just refuses to do so. This is refusal to abide by a court order without just cause and therefore it is our opinion that the trial court's finding of contempt should be affirmed.

The IRS claims that appellant's appeal is frivolous and warrants sanctions. Rule 38 of the Federal Rules of Appellate Procedure provides that: "If a court shall determine that an appeal is frivolous it may award just damages and single or double costs to the appellee." This court has stated that it would not hesitate to assess sanctions in appropriate tax cases. Martin v. Commissioner, 753 F.2d 1358, 1361 (6th Cir. 1985); accord Martin v. Commissioner, 756 F.2d 38, 41 (6th Cir. 1985).

In the instant case, appellant's

challenge to the district court's finding of contempt is meritless. Appellant attempts to attack the validity if the summons which this court has already held as properly enforced. Accordingly, we find this appeal to be an appropriate case for the imposition of sanctions.

The IRS requests an award of double costs and attorney's fees; however, it also states that the average amount of attorney's fees and costs it has incurred in cases of this type in the past year is $1,422. The IRS suggests that in lieu of costs and attorney's fees it would be most efficient in cases of this type to just award a flat amount of $1,500.

In awarding damages under Rule 38, this court has rejected a uniform national figure. Schofner v. Commissioner, Nos. 85-3900/3915, slip op. at 3 (6th Cir. Feb. 26, 1987). However, this court has also determined that a detailed accounting is not always necessary. Although in Schofner this court accepted as reasonable the IRS's request for a flat amount of damages, we indicated we were merely accepting that amount as appropriate in that particular case. Thus, the awarding of a flat amount of damages is not

mandated by the Schofner decision, and fashioning an appropriate sanction award remains within this court's discretion.

In the present case, we believe it is appropriate to grant damages in the form of single costs and attorney's fees. Our decision is partially influenced by the fact that the IRS in Schofner requested a flat dollar amount of $1,200 and in the instant case requests $1,500, without giving an explanation for this discrepancy.

We accordingly affirm the judgement of the district court holding appellant in contempt. We remand this case to the district court to award the government damages equal to single costs and attorney's fees incurred in this appeal.

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA,
Petitioner

C-1-85-576

v.

JAMES STEFANOPOULOS,
Respondent

FILED August 4, 1987

ORDER

This matter is before the Court upon Mr. Stefanopoulos' Motion in Support of Dismissal and Stay to Enforce the Court's Order of May 13, 1986 (doc. no. 51) and his Motion to Place Cash Bond in an interest Bearing Account (doc. no. 54).

Pursuant to a hearing on the Motions on August 3, 1987, the Court hereby finds that the Motion to Dismiss and for Stay must be **DENIED** for lack of jurisdiction pursuant to Mr. Stefanopoulos' Notice of Filing Writ of Certiorari in the United States Supreme Court (doc. no. 48). This Court affirms its Order entered July 12, 1987 (doc. no. 55) and **DENIES** the Motion for Stay of enforcement of this Court's May 13, 1986 Order of which Mr. Stefanopoulos has been found in contempt and which finding has been affirmed by the United States Court of Appeals for the Sixth Circuit (doc. no. 45).

Consistent with the mandate from the Court of Appeals, the Court will enforce its Order requiring production of all information at issue related to Thomson McKinnon Securities, Inc. and Dean Witter Reynolds, Inc. at the conclusion of the stay absent order from the Court of Appeals or Supreme Court to the contrary.

Further, the Court hereby ORDERS the Clerk of Courts to place Mr. Stefanopoulos' Four-thousand dollar ($4,000.00) cash bond into an interest bearing account.

IT IS SO ORDERED.

signed
Herman J. Weber, Judge
United States District Court

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EXHIBIT A

Procedural Posture

1. 01/04/85 IRS 2039 Summons issued by Agent Cynthia A. Fazio for 1/18/85 appearance before IRS.

2. 01/07/85 Second IRS 2039 Summons issued identical to 1/4/85 Summons except for 1/29/85 appearance and IRS 1040 forms attached. IRS Agent Fazio claimed she erred in not attaching forms to first summons.

3. 01/18/85 Appeared before IRS agents Cynthia Fazio and Larry Everson with J. Hoefker as witness, in lieu of 1/29/85 appearance.

4. 02/15/85 Civil Action # C-1-85-576...Declaration to Show Cause.

5. 02/27/85 Petition to Enforce IRS 2039 Summons for failure to appear on 1/29/85.

6. 03/01/85 Order to Show Cause before Magistrate J. Vincent Aug, Jr. on 3/25/85.

7. 03/06/85 Respondent's Letter to Magistrate Aug.

8. 03/25/85 Show Cause Hearing before Magistrate Aug (Aug arrived 15 min. late, presumably due to conference with US Attorney Brinkman). Objected to jurisdiction under Local Rule 2.4.1.

9. 04/25/85 Civil Minutes of Show Cause Hearing by Magistrate Aug.

10. 04/30/85 Notice - Report and Recommendation of Show Cause hearing by Magistrate Aug.

11. 05/10/85 Respondent motions for Extension of Time.

12. 05/22/85 Transfer of cases to Judge Herman J. Weber.

13. 06/21/85 Respondent granted extension of time to 7/10/85 by Order of Judge Weber.

14. 07/10/85 Respondent files Demand For Discovery. Also, Motion for Evidentiary Hearing.

15. 08/13/85 US response to Demand For Discovery.

16. 08/20/85 Judge Weber rules: Mag. Aug Report & Recommendations Adopted. Demand For Discovery Denied. Order - To Enforce 2039 Summons. Does not rule on Evidentiary Hearing.

17. 08/29/85 Notice of Appeal and Motion to Stay filed.

18. 08/30/85 Letter from IRS agent Kenneth J. Schoster for Tue. 9/10/85 appearance although he knows Notice of Appeal and Motion to Stay filed.

19. 09/03/85 US Memo in Opposition to

Motion For Stay.

20. 09/06/85 Notice of Appeal docketed as # 85-3709 in the 6th Cir. Court of Appeals.

21. 09/10/85 Appeared before IRS agents Ken Schoster & Otis Damron with witness J. Hoefker while Motion For Stay still pending.

22. 09/13/85 US Attorney's response to Demand For Discovery.

23. 09/16/85 Letter from US Attorney to Judge Weber asking on how to proceed.

24. 09/21/85 Transcript Order from Court of Appeals.

25. 09/21/85 FOIA Registered letter to IRS Director J.J. Ryan.

26. 09/23/85 PA letter to Disclosure Officer Everman.

27. 09/23/85 Return certificate from J.J. Ryan on FOIA request.

28. 10/04/85 Judge Weber denies Motion For Stay and rules his 8/20/86 Order is not a final appealable order until the court enforces the IRS 2039 Summons through contempt.

29. 10/08/85 Request for more time by IRS Disclosure Officer Everman for FOIA letter of 9/21/85 and PA letter of 9/23/85.

30. 10/10/85 Briefing Schedule-Court of Appeals.

31. 10/21/85 US Motion For Finding of Contempt with supporting, undated Affidavit of agent K. Schoster.

32. 11/07/85 IRS Disclosure Officer requests $50 in advance for search of records filed under PA and FOIA.

33. 11/19/85 $50 Money Order sent to IRS Disclosure Officer.

34. 11/22/85 Appeal submitted to US 6th Cir. Court of Appeals.

35. 12/06/85 Letter from Assistant Attorney General--case now assigned to Appellate Section of Tax Division, Washington, D.C.

36. 12/17/85 US Motion For Extension of Time to 1/10/86.

37. 12/20/85 US granted Extension of Time by Court of Appeals Clerk under 6th Cir. Rule 4(f).

38. 12/20/85 Request for more time (again) by IRS Disclosure Officer for letters of 9/21/85 (FOIA) and 9/23/85 (PA).

39. 12/23/85 Memo in Opposition to US Motion For Extension of Time.

40. 12/30/85 Motion to Compel US Attorney and IRS to produce data for best

defense and FOIA, respectively, filed in US Court of Appeals.

41. 12/31/85 Appellant motions to quash the extension of time which had been granted to the US by the Clerk, Court of Appeals, under Rule 4(f).

42. 01/09/86 US files brief with 6th Circuit Court of Appeals.

43. 01/15/86 Clerk, Court of Appeals, denies appellant's motion to quash the US being granted an extension of time.

44. 01/23/86 Appellant motions for Extension of Time to 2/13/86.

45. 01/24/86 Joint Appendix filed by US on appellant's behalf.

46. 02/01/86 Clerk, Court of Appeals, grants appellant's motion for Extension of Time to 2/13/86.

47. 02/10/86 Appellant motions for an Indefinite Extension of Time until Show Cause Hearing transcript is made available, plus two weeks.

48. 02/18/86 Judge Weber orders Civil Contempt Hearing for 4/4/86.

49. 02/19/86 Appellant receives incomplete transcript of 5/25/85 Show Cause Hearing.

50. 03/03/86 US letter to Clerk, Court of Appeals, consenting to 3/7/86 date for

appellant to file reply brief.
51. 03/07/86 Appellant's reply brief filed with 6th Cir. Court of Appeals.
52. 03/11/86 Court of Appeals denies Motion to Compel, Demand for Discovery, and affirms Jurisdiction (the latter two items treated as Writ of Mandamus by court). Evidentiary hearing also denied.
53. 03/12/86 IRS Director J. J. Ryan denies (for the most part) FOIA/PA information requested because of the "ongoing investigation" of respondent.
54. 03/13/86 Letter from US Attorney directing respondent to comply with 2039 Summons by appearing before IRS Agent Schoster on 3/27/86.
55. 03/19/86 Letter to IRS Agent Cynthia A. Fazio requesting information under the FOIA.
56. 03/27/86 Respondent appears before IRS Agents K. Schoster and R. Picola with witness A. Mesiskalis and tapes session. IRS not responsive to Public Servant Questionnaire.
57. 04/04/86 Civil Contempt Hearing before Judge Weber. Orders respondent to appear before IRS on 4/7/86 with records.
58. 04/07/86 Respondent appears before IRS Agents K. Schoster and R. Picola with

witness J. Hoefker. IRS provided with bank statements for years 1981-1983.

59. 04/07/86 US Attorney motions for a hearing to determine if respondent in compliance with Order or in contempt.

60. 04/08/86 Judge Weber orders contempt hearing for 4/11/86.

61. 04/11/86 Contempt hearing before Judge Weber. Judge Weber rules that records (including personal computer disk records) be turned over to IRS on 4/13/86.

62. 04/13/86 Appearance before IRS. Disk records garbled and incomplete.

63. 05/02/86 Hearing before Judge Weber to argue that records for years 1981-83 are available, but should wait for 1978-80 records from other sources and provide to IRS in one bundle.

64. 07/11/86 Respondent's counsel and US Attorney confer with Judge Weber. Set hearing for 7/18/86.

65. 07/18/86 Judge Weber rules respondent in contempt. 30 days to appeal and bond set.

66. 09/08/86 Appeal brief filed in US Sixth Circuit Court of Appeals.

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EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA
and Cynthia A. Fazio,
Revenue Agent, of the
Internal Revenue Service,
Petitioners,

CIVIL ACTION
NO. C-1-85-576

v.

James Stefanopoulos,
Respondent.

DECLARATION

Cynthia A. Fazio, a petitioner herein, declares:

1. I am a duly commissioned Revenue Agent employed in the Examination Division of the Office of the District Director of the Internal Revenue Service at Cincinnati, Ohio.

2. In my capacity as an agent, I am conducting an investigation into the income tax liability of James Stefanopoulos for the taxable years 1978 through 1983.

3. In furtherance of the above investigation and in accordance with U.S.C. & 7602(a), I issued on January 7, 1985, an administrative summons, IRS Form 2039, to James Stefanopoulos directing him to appear before me on January 29, 1985, at John Weld Peck Federal Building, 550 Main

Street, Cincinnati, Ohio 45202, in Room 4001, to produce for examination books, papers, records, or other data as described in said summons.

The summons is attached to the petition as Exhibit A.

4. In accordance with 26 U.S.C. & 7603 on January 7, 1985, I served an attested copy of the Internal Revenue Service summons described in Paragraph 3 above on the respondent, James Stefanopoulos, by personally handing it to him.

5. On January 29, 1985, the respondent, James Stefanopoulos failed to appear at the time and place required in the Summons. The respondent's refusal to comply with the summons continues to the date of this declaration.

6. The books, papers, records or other data sought by the summons are not already in the possession of the Internal Revenue Service.

7. All administrative steps required by the Internal Revenue Code for issuance of a summons have been taken.

8. It is necessary to examine the books, papers, records, or other data sought by the summons in order to properly investigate the federal income tax liability of

James Stefanopoulos for the years 1978 through 1983.

I declare under the penalty of perjury that the foregoing is true and correct.

Executed this 15th day of February, 1985.

signed
Cynthia A. Fazio
Revenue Agent
Internal Revenue Service

Subscribed and sworn to before me this 15th day of February, 1985.

signed
Donald E. Grigsby
Notary Public
Attorney At Law

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EXHIBIT C

INTERNAL REVENUE SERVICE

SUMMONS REFERRAL SHEET

1. Name and address of person summoned:

James Stefanopoulos

6490 Duet Lane

Cincinnati, Ohio 45239

2. Summons served at above address ?:

No (Explain in Section C).

3. Manner of Service:

Personal service on person summoned.

4. If third party summons...?:

Not a third party summons.

5. Date of service:

January 7, 1985

Appearance date:

January 29, 1985

6. Person summoned:

Did not appear.

7. Does IRS possess any of summoned information ?:

Yes. (Explain in Section C).

8. Taxpayer's name and last known address if different from item 1:

(Blank).

9. Taxpayer's TIN:

273-26-3005

10. Type of investigation:

Delinquent return.

11. Type of tax and periods involved:
Income Tax. 1978-1983.
12. All applicable tax periods included on summons ?:
Yes.
13. Statute of limitations problem ?:
No.
14. Tax liability involved:
estimated $11,345.00.
(Explain in Section C)
15. Taxpayer category (corporation, salaried individual, etc.):
Salaried Stock Broker.
16. Other civil, criminal or administrative actions (summons enforcement, suit, seizures, etc.) pending against taxpayer or person summoned ?:
No.

Section A. Describe exact purpose of summons and relevance of summoned information to periods under investigation:
To obtain all books, records, papers, and other data in taxpayer's possession or control reflecting the receipt of taxable income by taxpayer for 1978 through 1983.

Section B. Reason for not complying, if known:
Not known.

Section C. Other information: (Include

synopsis of attempts to obtain information before summons was issued, if summoned person is the taxpayer.):

Summons was served at Thomson McKinnon Securities, 36 East Fourth Street, Cincinnati on January 4, 1985, directing appearance for January 18, 1985 at 9:00 a.m. The summons indicated that blank federal income tax forms would be attached to guide Mr. Stefanopoulos in the preparation of the necessary documents. Summons was served without such attachments. Mr. Venable of District Counsel was contacted about the above mentioned situation and he told revenue agent that a new summons should be issued.

Summons was served at Thomson McKinnon Securities, 36 east Fourth Street, on January 7, 1985. Time for appearance was specified as January 29, 1985 at 9:00 a.m. At the time of the issuance of the second summons, it was explained that the first summons was in error since blank returns were not attached. Mr. Stefanopoulos was told that his time for appearance was January 29, 1985 at 9:00 a.m. Revenue Agent, told both [sic] Mr. Stefanopoulos that she would hold both January 18 and January 29

open to meet with him.

On the morning of January 18, Mr. Stefanopoulos phoned revenue agent to set up a 2:00 p.m. meeting. At this time Mr. Stefanopoulos and a witness appeared for the appointment. Mr. Stefanopoulos indicated that he would not answer questions or provide records until he consulted counsel. Mr. Stefanopoulos was told that the summons specified his appearance for January 29, 1985 at 9:00 a.m., he indicated that he understood.

Mr. Stefanopoulos did not appear on January 29, 1985 at 9:00 a.m.

Question #7:

The estimated tax liability for 1978 through 1981 is based on service center documents. There is no liability determined for 1982 since no documentation was available.

#14:

Tax is based on Married Filing Joint with six exemptions (based on last filed return). Tax liability is calculated as tax less prepayment credits.

Revenue Agent:

signed
Cynthia A. Fazio Date: 1/29/85

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EXHIBIT D

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA
and Cynthia A. Fazio, etc.,
Plaintiff,

Case No.
C-1-85-576
April 4, 1986
10:00 a.m.

v.

James Stefanopoulos,
Defendant.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE HERMAN J. WEBER

APPEARANCES:

On behalf of Plaintiff:

Kathleen M. Brinkman, Esq.,
Assistant U.S. Attorney,
Room 220,
USPO & Courthouse Bldg.,
Cincinnati, Ohio 45202

On behalf of the Defendant:

James Stefanopoulos, in pro se

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MS. BRINKMAN: I am not talking about a copy. If Mr. Stefanopoulos received income under any other name or any other social security number or through any other nominee or person would you have knowledge of that?

WITNESS SCHOSTER: No.

MS. BRINKMAN: And that goes for W-2's or 1099 information.

THE COURT: Now, I am asking about the 1099s. Do you have any 1099s?

MR. STEFANOPOULOS: Sir, there is information off of the 1099s that appears on other statements that I have, so in answer to that question, I probably have some of them, but most of the comprehensive information insofar as what the 1099 reports appears on other statements, so we can certainly match my statements with the Internal Revenue Service's 1099s.

THE COURT: So you can bring the information?

MR. STEFANOPOULOS: That is correct.

THE COURT: All right, that information will be available, the 1099 forms, and the time I think we are talking about is 1978 to 1983.

MR. STEFANOPOULOS: Correct.

THE COURT: Now the next item, employee earnings statements for the year 19-- what do you mean by that, employee earnings statements? What does that mean?

WITNESS SCHOSTER: That would be the year-end checks, check stubs, payroll check stubs.

THE COURT: Why would you need those?

WITNESS SCHOSTER: To -- well, again -- I hate to say this, but I didn't issue the summons, to be honest with your.

THE COURT: Who issued the summons?

WITNESS SCHOSTER: Cynthia Fazio issued the summons, but I think her intention with respect to that was to match that up with the W-2 to see if the W-2 was correct.

THE COURT: Well, that would be the responsibility of the employer, wouldn't it, the person that made out the original W-2, if it isn't correct, then they are the ones that are causing this difficulty?

WITNESS SCHOSTER: That is true, but the employee still, if it is incorrect and the employee knows about it he is responsible for correcting it.

THE COURT: Well, I mean, I think we are all responsible for our own tax returns, unfortunately or fortunately. What about employee earning statements? What does that mean to you?

MR. STEFANOPOULOS: Normally the year end statements are W-2s, isn't that correct?

THE COURT: I don't know. I am just asking. Okay. tell me something about yourself. What type of business are you in? Introduce yourself to me.

MR. STEFANOPOULOS: Oh, my name is James Stefanopoulos, and I am currently a stockbroker with Thomson-McKinnom.

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